

The Administrative Law Judge entered an Order that attorney fees be paid at the contract rate of twenty-five percent (25%) of the temporary total disability payments that were reinstated effective January 9, 1995. Those preliminary benefits were reinstated by the respondent following claimant's counsel having filed an Application for Preliminary Hearing and proceeding to benefit review conference. By agreement of the parties, temporary total disability compensation was reinstated prior to there actually having been conducted a preliminary hearing before the Administrative Law Judge. Accordingly, there was no formal order for payment of preliminary benefits. Subsequently, a dispute developed between claimant and his attorney which resulted in claimant's counsel withdrawing and filing a lien for attorney fees. The April 11, 1995 Order resulted from a preliminary hearing on that date on the sole issue of an attorney fees claim for twenty-five percent (25%) of temporary total disability benefits.

The Appeals Board has jurisdiction of this appeal pursuant to K.S.A. 44-551(b)(1), as amended by S.B. 59 (1995). For purposes of Appeals Board review this Order for attorney fees is not an appeal from a preliminary hearing order pursuant to K.S.A. 44-551(b)(2)(A), as amended by S.B. 59 (1995), and K.S.A. 44-534a(a)(2), because it is a final Order with regard to the attorney fees in question and, thus, not a preliminary or interlocutory appeal from an order which will be reviewed at the time of final award in this claim. See Waln v. Clarkson Constr. Co., 18 Kan. App. 2d 729, 861 P.2d 1355 (1993).

The Appeals Board finds that Michael Snider is entitled to attorney fees payable at the contract rate of twenty-five percent (25%) of the temporary total disability payments that were reinstated effective January 9, 1995 as a result of his efforts on claimant's behalf. The contract between claimant and his attorney provides for an attorney fee of twenty-five percent (25%) of any compensation, settlement or award obtained by such attorney's efforts, subject to review and approval by the appropriate court having jurisdiction of the matter. The Appeals Board finds the question of attorney fees to be controlled by K.S.A. 1992 Supp. 44-536 because, although claimant alleges a date of accident to be a series beginning April 29, 1993 with no specific ending date, the record shows that claimant's last day worked was prior to July 1, 1993. Accordingly, the 1993 amendments to the attorney fees statute are not applicable to this case.

While it would have been preferable had the record contained testimony whereby the Administrative Law Judge could have made specific findings of fact in the record which would more clearly evidence that he considered and applied the factors enumerated in K.S.A. 1992 Supp. 44-536 in making his award of attorney fees in this matter, the Appeals Board, taking the record as a whole, finds the award of twenty-five percent (25%) to be consistent with the contract of employment between the claimant and his attorney, it is within the range permitted by law and is reasonable and appropriate under the circumstances of this case for the services provided.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated April 11, 1995 shall be, and is hereby, affirmed and attorney Michael Snider is entitled to attorney fees representing twenty-five percent (25%) of the temporary total disability compensation reinstated effective January 9, 1995.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1995.

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BOARD MEMBER

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BOARD MEMBER

c:     Everett McLaughlin, Wichita, KS  
         Michael Snider, Wichita, KS  
         Kirby Vernon, Wichita, KS  
         John D. Clark, Administrative Law Judge  
         Philip S. Harness, Director